
OPINION OF THE PUBLIC ACCESS COUNSELOR

THE INDIANAPOLIS STAR,
Complainant,

v.

CITY OF CARMEL
Respondent.

Formal Complaint No.
18-FC-67

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that the City of Carmel (“City”) violated the Access to Public Records Act¹ (“APRA”). Attorney John R. Maley filed a response with this Office on behalf of the City. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on May 7, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute between *The Indianapolis Star* and the City of Carmel over two records requests the City partially denied.

On February 21, 2018, *IndyStar* reporter Holly Hays submitted a public records request to Carmel, seeking the following:

Any public safety report (Carmel Fire, EMS, Police) regarding a police and medical call to 1711 W. 116th St. on Feb. 18, 2018 at 3:47 p.m. The specific report number is IN0290100. I request full access to that report and any corresponding narrative provided by police/fire/EMS personnel.

The next day, *IndyStar* reporter Vic Ryckaert submitted a public records request to the Carmel for the following:

Audio of 911 calls made regarding a police, fire, and/or medical run to 1711 W. 116th Street, Carmel.

On March 5, 2018, the City timely acknowledged the requests and provided records and supplemental responses to both the Hays and Ryckaert requests, albeit redacted. The *IndyStar* takes exception to those redactions, specifically, the withholding of “investigatory” information and “medical” information in the incident reports and the 911 narrative.

The City disputes that it violated APRA in this case. First, the City asserts that it properly withheld and/or redacted records in response to the Hays request as it released everything required by the controlling ambulance service statute,

Indiana code section 16-31-2-11. Similarly it argues the portion of information redacted from the 911 narrative is patient medical records.

ANALYSIS

This case presents two primary issues: what kinds of information must be released pursuant to request for information from an ambulance run; and when can a 911 audio or narrative be redacted to protect caller identity and personal information.

1.

The Access to Public Records Act (“APRA”)

The Access to Public Records Act (“APRA”) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The legislature expressly requires the Act to be liberally construed and places the “burden of proof for the nondisclosure of a public record on the public agency that would deny access...and not on the person seeking to inspect and copy the record.” *Id.*

It should be noted at the outset that the APRA and its provisions are to be liberally construed in factor of transparency. *Id.* Conversely, its exceptions to disclosure are to be construed strictly. See *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. App., 1995) [Citations omitted], quoting *Common Council of City of Peru v. Peru Daily Tribune, Inc.*, 440 N.E. 2d 726, 729 (Ind. App., 1982) [Citations omitted].

There is no dispute that the City of Carmel (“City”) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the City’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a).

In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2.1 Patient Medical Records created by a Provider

Certain records specified under APRA are not subject to disclosure unless access is required by state or federal statute or access is granted by a court under the rules of discovery.²

In accordance with Indiana Code section 5-14-3-4(a)(9) a public agency may not disclose “[p]atient medical records and charts created by a provider unless the patient gives written consent under [Indiana Code section] 16-39 or as provided under [Indiana Code section] 16-41-8.

Patient for purposes of APRA has the meaning set out in Indiana Code section 16-18-2-272(d) and means an individual who has received health care services from a provider for the

² Ind. Code §§ 5-14-3-4(a)(1)-(12).

examination, treatment, diagnoses, or prevention of a physical or mental condition.³

Under APRA, *provider* has the same meaning set out in Indiana Code section 16-18-2-295(b) and includes an employer of a certified emergency medical technician, a certified advanced emergency medical technician, or a licensed paramedic.

Pursuant to Indiana Code section 16-31-2-11, the following information, if contained in a pre-hospital ambulance rescue or report record regarding an emergency patient, is public information and must be made available for inspection and copying under IC 5-14-3:

- (1) The date and time of the request for ambulance services.
- (2) The reason for the request for assistance.
- (3) The time and nature of the response to the request for ambulance services.
- (4) The time of arrival at the scene where the patient was located.
- (5) The time of departure from the scene where the patient was located.
- (6) The name of the facility, if any, to which the patient was delivered for further treatment and the time of arrival at that facility.

³ Ind. Code § 5-14-3-2(m).

All other records or records by a pre-hospital ambulance rescue is confidential. See *supra* at (b).

Although unclear at this time, it appears as if the EMS and ambulance service is provided directly by the City of Carmel. It matters not if this service is outsourced on contract or whether provided by City personnel, the City is functioning as a provider for the purposes of the above statute.

To that extent, pursuant to the plain language of the statute, the reports containing personal health information generated by the ambulance service are confidential. While still a public record, any confidential information may be separated from the disclosable information and redacted.

It appears as if the City has disclosed all records able to be released pursuant and responsive to the request and redactions were appropriate.

In regard to the initial response from the City, it claimed the wrong exemptions to disclosure. Specifically, it cited Indiana code sections 5-14-3-4(a)12, (b)(1) and (b)(21). While (a)(12) applies to the extent that social security numbers were redacted, the other two exemptions to disclosure involve law enforcement exclusively. Nothing in the information provided suggests any law enforcement activity. As discussed below dispatch and ambulance services are not law enforcement activities. If they were, they actually trigger more inclusive requirements to disclosure in the forms of daily logs and identifiable patient information. That written, no argument to this office under another statute has been waived as justification for redactions.

2.2 911 Dispatch Records

Although not provided in information to this Office, I have confirmed that the City of Carmel does not have its own EMS dispatch service but ambulance, fire and police calls go through Hamilton County 911, a public agency mutually exclusive to the City. As held in *Opinion of the Public Access Counselor 17-FC-167*⁴, dispatch centers are not law enforcement or investigative agencies by definition. To that end, they are not medical providers either, nor do they employ EMTs. While Public Access Counselors have held in the past that 911 calls may be redacted in very limited circumstances and only when absolutely necessary, those have been in law enforcement scenarios.

A municipality, county, dispatch center or any other provider does not *create* 911 calls – a key element in Indiana code section 5-14-3-4(a)(9) - they merely field them and become their custodian. While they may contain sensitive information, the Indiana General Assembly has not seen fit to exempt them from the public record.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the City of Carmel properly withheld pre-hospital ambulance information but erred in withholding portions of the 911 narrative and/or audio.

⁴ Currently in litigation in Marion County court